

**RESOLUTION NO.**

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Tree Removal Permit for certain real property described herein for the purpose of overturning the Director's decision to deny removal of one Douglas Fir Tree approximately 100 inches in circumference.

**FILE NO. TR 02-020**

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Title 13 of the San Jose Municipal Code, on June 18, 2001, an application (File No. TR02-020) was filed for a Tree Removal Permit for the purpose of removing one Douglas Fir Tree approximately 100 inches in circumference, on that certain real property (hereinafter referred to as "subject property"), situate in the R-1-8 Residence Zoning District, located at 1060 Malone Road, San Jose, and

WHEREAS, that certain Douglas Fir tree, approximately 100 inches in circumference at a height 24 inches above grade on February 22, 2002 located between 1060 Malone Road and 1054 Malone Road, approximately 62 inches on 1060 Malone Road and 2 inches on 1054 Malone Road, and approximately 20 feet from the curb; and

WHEREAS, pursuant to and in accordance with Title 13 of the San Jose Municipal Code, the Director of Planning, Building and Code Enforcement conducted a hearing on said application; and

WHEREAS, on March 27, 2002, the Director of Planning, Building and Code Enforcement denied the application, from which decision the co-applicant has appealed to this Planning Commission; and

WHEREAS, pursuant to and in accordance with Title 13 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The subject tree is located within the front yard of 1060 Malone Road and has grown over the property line between 1060 and 1054 Malone Road. The tree has caused damage to the driveway located at 1054 Malone Road.
2. The Superior Court of California issued a Stipulation and Order regarding removal of tree dated October 12, 2001 which order removal of the subject tree. The Court Order is binding on the property owners but does not limit the City's ability to regulate removal of trees through the Tree Removal process.
3. Arborist reports by Arbor Care dated June 28, 2000, Arbor Resources dated August 16, 2000, TruGreen Landcare dated September 14, 2000, Tree Decisions dated August 8, 2001 which assessed the health of the tree and the tree's relationship to the damaged driveway were submitted.

The Planning Commission overturned the Director's decision to deny the requested Tree Removal Permit for the following reasons:

1. The findings required in Section 13.32, Tree Removal Controls, can be made to recommend approval of the proposed tree removal.
2. The applicant submitted four arborist reports that state that the tree is healthy and in good condition. The reports do not specifically indicate or assess whether the tree would survive the construction impacts resulting from reconstruction of the driveway.
3. The tree is damaging the driveway at 1054 Malone Road and its removal would not constitute wanton destruction of trees.

THEREFORE, pursuant to the provisions of Title 13 the subject tree removal permit is hereby approved subject to the following condition:

1. The subject tree will be required to be replaced by four 24-inch box trees in one or a combination of the following methods: 1) a minimum of one tree on either or both of the

subject properties; 2) street trees in the immediate neighborhood in consultation with the City Arborist; or 4) a donation in the amount of \$250 per tree to Our City Forest.

ADOPTED and issued this 8<sup>th</sup> day of May, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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Chairperson

ATTEST:

Stephen M. Haase, Secretary

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Deputy

### **NOTICE TO PARTIES**

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

207-13/AA:ds